Supreme Court, U.S.
FILED
APR 24 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-1497

CATHERINE C. ALFREE, Appellant
v.
EDWIN W. ALFREE, JR., Appellee

APPEAL FROM THE SUPREME COURT
OF THE STATE OF DELAWARE

APPENDIX

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IN THE SUPREME COURT
OF THE STATE OF DELAWARE

CATHERINE C. ALFREE, Plaintiff-Below, Appellant,	)	
v.	)	No. 35, 1979
EDWIN W. ALFREE, JR., Defendant-Below, Appellee.	)	

Submitted: November 14, 1979
Decided: December 26, 1979

Before HERRMANN, Chief Justice, and DUFFY, McNEILLY, QUILLEN and HORSEY, Justices, constituting the Court en Banc.

Upon appeal from Superior Court. Affirmed.

James R. Leonard, of Potter & Carmine, Wilmington, for plaintiff-appellant.

Wayne Elliott and Edward P. Welch, of Prickett, Ward, Burt & Sanders, Wilmington, for defendant-appellee.

PER CURIAM:

This personal injury action arises out of an automobile accident which occurred on June 26, 1976. At that time

the plaintiff, Catherine C. Alfree, was an occupant of an automobile operated by her husband, the defendant Edwin W. Alfree, Jr. The parties have since separated but they are not divorced.

In the Superior Court, given the factual context of the cases, the defendant's motion for summary judgment was granted on the ground of the interspousal immunity doctrine. The plaintiff appealed and, after oral argument before a three Justice panel on June 15, 1979, the panel issued a unanimous opinion, dated August 16, 1979, which affirmed the judgment of the Superior Court. Subsequent to the panel's opinion, the plaintiff moved for a rehearing before the Court en Banc.[1] On September 28, 1979, the motion was granted. In the interest of justice and in addition to matters previously raised, the Court sua sponte directed briefing and argument on whether the interspousal tort immunity doctrine violated plaintiff's due process or equal protection rights under the Fourteenth Amendment of the Constitution of the United States. Argument before the Court en Banc was

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[1]Temporary Rule 200 of this Court's rules authorizes such a motion upon any of the following grounds: the proceeding involves a question of exceptional importance; consideration by the Court en Banc is necessary to secure or maintain uniformity in Supreme Court decisions; or the case may be controlled by a prior decision of the Court which should be reconsidered or which may be overruled.

held on November 14, 1979, and this opinion of the Court en Banc supersedes the earlier panel opinion which is hereby withdrawn.

We affirm the judgment of the Superior Court.

It is settled law in Delaware that one spouse may not sue the other at law in tort. Plotkin v. Plotkin, Del. Super., 125 A. 455 (1924); Peters v. Peters, Del. Ch., 169 A. 298 (1933); duPont v. duPont, Del. Ch., 98 A.2d 493 (1953); Owens v. Owens, Del. Supr., 149 A.2d 320 (1959); Saunders v. Hill, Del. Supr., 202 A.2d 807 (1964); Fields v. Synthetic Ropes, Inc., Del. Supr., 215 A.2d 427 (1965) and Short Line, Inc. of Penn. v. Perez, Del. Supr., 238 A.2d 341 (1968). We are not persuaded that the common law rule as recognized by the Superior Court in the Plotkin case in 1924 and by the Court of Chancery and the Supreme Court since 1924 should be overruled by judicial decision. "[T]he right [of spouses] to sue each other strikes at the very heart of domestic relations and its effect not only upon the home ties, but upon society generally would be far reaching." Plotkin v. Plotkin, supra., 125 A. at 457.

We are aware of the modern, widespread criticism of the rationale of the doctrine. See e.g. Merenoff v. Merenoff, N.J. Supr., 388 A.2d 951, 958-960 (1978). ["* * * currently only a handful of courts unqualifiedly retain the doctrine in its pristine formulation" 388 A.2d at 954; and "[i]t is clear, * * *, that despite its survival in varying forms, interspousal immunity is no longer the

doctrinal monolith it was in olden times." 388 A.2d at 955.] But, nonetheless, we think that, in addition to its time-honored recognition in this State it retains sufficient merit to warrant continued adherence by this Court for two sets of reasons.

First as to tort law, elimination of the doctrine could: (1) open up the possibility of various tort actions such as assualt and intentional infliction of emotional harm which could go to the heart of public policy and legislative policy relating to marriage; (2) make many routine automobile cases by way of contribution an involuntary suit of one spouse against another; (3) make common automobile negligence issues, including assumption of the risk and guest statute questions, ones of aggravated accusation by one spouse against another; and (4) affect legislative policy in the no-fault insurance field.

Second, as to property law, we note that marriage has many protective attributes not available to others including the duty to support, the right to inherit, and the right to hold property free from assualt by a spouse's individual creditors as tenants by the entirety. Thus, the public policy relating to the marriage status is more complex than treatment of interspousal immunity doctrine in isolation would suggest.

Like the public policy considerations involved in the oft-attacked Automobile Guest Statute, the problem is "more appropriate for legislative solution than for judicial determination. The General Assembly has access to relevant

information bearing upon these matters more significant than any afforded this Court, bound as it is by the limitations of the record of this judicial proceeding." Justice v. Gatchell, Del. Supr., 325 A.2d 97, 102 (1974). "If a change is to be effected in the well-settled public policy of this State, such change must be effected by the Legislature and not by this Court." Saunders v. Hill, supra., 202 A.2d at 810.

The Delaware Constitutional provision--"every man for an injury done him . . .shall have remedy by the due course of law" [Del. Const. Art. I, Sec. 9]--does not require the courts to create a right of action unknown to the common law.[2] The interspousal immunity doctrine has not been abolished by the Married Women Acts. Plotkin v. Plotkin, supra. The case of Williams v. Williams, Del. Supr., 369 A.2d 669 (1976), limiting the application of the doctrine of parental tort immunity in automobile

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[2]For history, see: Art. I, Sec. 9 of Del. Const. of 1831; Art. I, Sec. 9 of Del. Const. of 1792; and Sec. 12 of Declaration of Rights and Fundamental Rules of the Delaware State of 1776. See also: Heckendorn v. First National Bank, Ill. Supr., 166 N.E. 2d 571, 573 (1960); Conley v. Conley, Mont. Supr., 15 P.2d 922, 926 (1932); Smith v. Smith, Or. Supr., 287 P.2d 572, 576 (1955); Gowin v. Gowin, Tex. Ct. App., 264 S.W. 529 (1924), aff'd Tex. Supr., 292 S.W. 211 (1927).

negligence cases by its express terms distinguished and reserved "for another day the question of husband-wife tort immunity under Delaware law." Id., 369 A.2d at 670; see also Schneider v. Coe, Del. Supr., 405 A.2d 682 (1979).

Finally, as to the Federal due process and equal protection clauses, little law directly applicable has been brought to our attention. The strongest precedent is Paiewonsky v. Paiewonsky, 3rd Cir., 446 F.2d 178, 181-182 (1971), cert. den., 405 U.S. 919, 92 S. Ct. 944, 30 L. Ed. 2d 788 (1972). In that case, our former Chancellor, now Chief Judge Seitz of the Federal Circuit which includes Delaware, writing of the three judge panel, found no violation of equal protection in the alleged discrimination resulting from the doctrine of interspousal immunity. The Court said it "[had] not been convinced that the immunity doctrine lacks substantial vitality" and "it follows that it has a reasonable relationship to the [promotion of domestic tranquilty] interest sought to be furthered by it. See also Brawner v. Brawner, Mo. Supr., 327 S.W. 2d 808, 815 (1959). Other courts in rejecting equal protection claims have noted the doctrine applies to husbands as well as wives. See Locklair v. Locklair, D.S.C., 256 F. Supp., 530 (1960); Smith v. Smith, Pa. Super., 361 A.2d 756, 757 (1976). Due process claims have fared no better evidently on the ground that a spouse does not have a property interest in a cause of action not recognized by common law or on the ground that any such property interest in a suit against a spouse is lawfully restricted in a matter of public concern by

the State's police power: Heckendorn v. First National Bank, supra., 166 N.E. 2d at 574; Brawner v. Brawner, supra., 327 S.W. 2d at 814-815; Smith v. Smith, supra., 361 A.2d at 757.[3] Thus, based on current precedent, there appears to be no Federal constitutional limitation on the interspousal immunity doctrine. We so hold.

Accordingly, we commend to the General Assembly the problem of reviewing the rights of a married spouse in the position of this plaintiff in this day and age.

The judgment of the Superior Court granting summary judgment to the defendant is affirmed.

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[3] We have found one case stating that the interspousal immunity doctrine must yield to Federal constitutional provisions. Alexander v. Alexander, W.D.S.C., 140 F. Supp. 925, 928-929 (1956). This decision has been expressly repudiated in: Locklair v. Locklair, supra., 256 F. Supp., at 532-533; Bencomo v. Bencomo, Fla. Supr., 200 So.2d 171, 174 (1967); and Gaston v. Pittman, N.D. Fla., 285 F. Supp., 645, 646 (1968), rev'd on grounds that a divorced woman can maintain an action against her former husband for a tort committed by him prior to their marriage [Gaston v. Pittman, Fla. Supr., 224 So.2d 326 (1969)], 5th Cir., 413 F.2d 1031 (1969).

IN THE SUPREME COURT
OF THE STATE OF DELAWARE

CATHERINE C. ALFREE,	)	
	)	
Plaintiff-Below,	)	
Appellant,	)	
	)	
v.	)	No. 35, 1979
	)	
EDWIN W. ALFREE, JR.,	)	
	)	
Defendant-Below,	)	
Appellee.	)	

Submitted: August 28, 1979
Decided: September 28, 1979

Before HERRMANN, Chief Justice, DUFFY, McNEILLY, QUILLEN and HORSEY, Justices, constituting the Court en Banc.

O R D E R

This 28th day of September, 1979,

IT IS ORDERED:

(1) That the appellant's motion for rehearing before the Court en Banc, upon the issue of the doctrine of interspousal tort immunity, be and it is hereby granted;

(2) That, in addition to the contentions of the parties previously presented, the following question be briefed and argued upon the rehearing:

Does the doctrine of interspousal tort immuity, as established by the Delaware case law, violate the plaintiff's due process or equal protection rights under the Fourteenth Amendment of the Constitution of the United States?

(3) That any additional briefs be exchanged by November 1, 1979;

(4) That oral argument upon this hearing be scheduled for the November Session of the Court.

BY THE COURT:

Chief Justice Herrmann

IN THE SUPREME COURT
OF THE STATE OF DELAWARE

CATHERINE C. ALFREE,	)	
	)	
Plaintiff-Below,	)	
Appellant,	)	
	)	
v.	)	No. 35, 1979
	)	
EDWIN W. ALFREE, JR.,	)	
	)	
Defendant-Below,	)	
Appellee.	)	

Submitted: June 15, 1979
Decided: August 16, 1979

Before DUFFY, McNEILLY, and QUILLEN as Justices.

Upon appeal from Superior Court. Affirmed.

James R. Leonard, of Potter & Carmine, Wilmington, for plaintiff-appellant.

Wayne Elliott and Edward P. Welch, of Prickett, Ward, Burt & Sanders, Wilmington, for defendant-appellee.

PER CURIAM:

This action arises out of an automobile accident which occurred on June 26, 1976. At that time, the plaintiff, Catherine C. Alfree, was an occupant of an automobile operated by her husband, the defendant, Edwin W. Alfree, Jr.

It is settled law in Delaware that one spouse may not sue the other in tort. Plotkin v. Plotkin, Del. Super., 125 A. 455 (1924) (Judges Richards and Rodney); Peters v. Peters, Del. Ch., 169 A. 298 (1933); (Chancellor Josiah O. Wolcott); duPont v. duPont, Del. Ch., 98 A.2d 493 (1953); (Chancellor Seitz) Saunders v. Hill, Del. Supr., 202 A.2d 807 (1964); (Chief Justice Terry and Justices Wolcott and Carey); Fields v. Synthetic Ropes, Inc., Del. Supr., 215 A.2d 427 (1965) and Short Line, Inc. of Penn. v. Perez, Del. Supr., 238 A.2d 341 (1968) (Chief Justice Wolcott and Justices Carey and Herrmann). We are not persuaded that the common law rule as recognized by the Superior Court in the Plotkin case in 1924 and by the Court of Chancery and the Supreme Court since 1924 should be overruled by judicial decision. "[T]he right [of spouses] to sue each other strikes at the very heart of domestic relations and its effect not only upon the home ties, but upon society generally would be far reaching." Plotkin v. Plotkin, supra., 125 A. at 457. "If a change is to be effected in the well-settled public policy of this State, such change must be effected by the Legislature and not by this Court." Saunders v. Hill, supra., 202 A.2d at 810.

The Delaware Constitutional provision--"every man for an injury done him

. . .shall have remedy by the due course of law" [Del. Const. Art. I, Sec. 9]--does not require the courts to create a right of action unknown to the common law. The interspousal immunity doctrine has not been abolished by the Married Women Acts. Plotkin v. Plotkin, supra. The case of Williams v. Williams, Del. Supr., 369 A.2d 669 (1976), by its express terms does not require a change in the husband-wife tort immunity under Delaware law. Id., 369 A.2d at 670; see also Schneider v. Coe, Del. Supr., A.2d (1979).

The judgment of the Superior Court granting summary judgment to the defendant is affirmed.

Submitted: February 1, 1979
Decided: February 2, 1979

Re: Catherine C. Alfree v.
Edwin W. Alfree, Jr.
Civil Action No. 77C-SE-79

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Gentlemen:

This action is before the Court on defendant's motion for summary judgment. He contends that the suit is barred by the doctrine of interspousal tort immunity.

On June 26, 1976, defendant was operating a motor vehicle in which plaintiff-wife and another person, James Starkey, were passengers. Traveling at a high rate of speed on County Route 90 one-half mile west of Smyrna, defendant lost control of the vehicle and struck a utility pole and tree. Mrs. Alfree suffered severe injuries including the amputation of her right leg. Starkey was killed and defendant was convicted of manslaughter as a result.

Since the accident, except for one month during which plaintiff attempted to resume her former job, Mrs. Alfree has been unemployed and currently is receiving public assistance. She is now 22 years old and since her separation from her husband has the added responsibilty of caring for her child.

It is settled law in Delaware that one spouse may not sue the other in tort. Short Line, Inc. of Penn. v. Perez, Del. Supr., 238 A.2d 341 (1968); Fields v. Synthetic Ropes, Inc., Del. Supr., 215 A.2d 427 (1965); Plotkin v. Plotkin, Del. Super., 2 W.W. Harr. 455, 125 A. 455 (1924). Although numerous jurisdictions and authorities have criticized this doctrine, it is still controlling in Delaware. Whether interspousal tort immunity is unjust and archaic is a matter to be determined by our Supreme Court. The decision of this Court is bound by the prevailing law; accordingly, the motion for summary judgment should be GRANTED. IT IS SO ORDERED.

Very truly yours,

VINCENT A. BIFFERATO

VAB:g

cc: Prothonotary
Law Library
Mr. Fred Kirch
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IN THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CATHERINE C. ALFREE, Plaintiff,	)	
v.	)	C. A. No. 77C-SE-1979
EDWIN W. ALFREE, JR., Defendant.	)	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Catherine C. Alfree, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Delaware dated December 26, 1979, affirming the judgment of the Superior Court of the State of Delaware in and for New Castle County granting summary judgment to the defendant-appellee entered in this action on February 2, 1979.

This appeal is taken pursuant to Title 28, United States Code, §1257, sub-paragraph (2).

DATED: March 24, 1980.

POTTER & CARMINE, P.A.
BY:
STEPHEN B. POTTER, ESQ.
DAVID R. HODAS, ESQ.
JAMES R. LEONARD, ESQ.

IN THE SUPREME COURT
OF THE STATE OF DELAWARE

CATHERINE C. ALFREE,	)	
	)	
Plaintiff-Below,	)	
Appellant,	)	
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v.	)	No. 35, 1979
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EDWIN W. ALFREE, JR.,	)	
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Defendant-Below,	)	
Appellee.	)	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

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This appeal is taken pursuant to Title 28, United States Code, §1257, sub-paragraph (2).

DATED: March 24, 1980.

POTTER & CARMINE, P.A.
BY:
STEPHEN B. POTTER, ESQ.
DAVID R. HODAS, ESQ.
JAMES R. LEONARD, ESQ.